IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5091 of 2003

Kum.Sushama Kashinath Boir)
House No.398/3/7, Market Yard,)
Nagar, Bhivandi, Dist.Thane.)..PETITIONER

Versus

1. The State of Maharashtra)
through Secretary, Food and)
Civil Supplies Department,)
Mantralaya, Mumbai.)
2. The Hon'ble State Minister,)
Food and Civil Supplies)
Department, Mantralay, Mumbai)
3. The Controller of Rationing)
Churchgate, Mumbai-400 020.)
4. Smt.Rasika Rajesh Chavan,)
residing at 10, Vetalpada,)
Bhivandi, Dist. Thane.)
5. Kumari Usha Rambhau Gharat,)
residing at Batal B,)
Padmanagar, Bhivandi, Dist.)
Thane.)...RESPONDENTS

Ms. Leena Patil with Mr. P.A. Pol, for the Petitioner
Mrs. S.S. Bhende, AGP for Respondent Nos. 1 and 3.
Mr. Mukesh V. Aiya, for the Respondent NO.5.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 4th April,2005

ORAL JUDGMENT (PER F.I. REBELLO, J):

. Rule. Heard forthwith.

2. The petitioner was one amongst the applicants who applied for allotment of Fair Price Shop pursuant to an advertisement dated 25th June, 20-01 under Item No.185 of 2001. The petitioner is an educated unemployed, handicapped and also belongs to backward class. The respondent No.3 by order dated 27th December, 2002 found that the petitioner fell under

priority No.2 and in addition priority No.5 and 8. The respondent No.3 further found that one Kum.Sumedha Sudama Sonawane and Respondent No.4 fell under priority No.2, but considering that the petitioner fell under priority No.2, 5 and 8 allotted the shop in favour of the petitioner. The application of Respondent No.5 was rejected. It was found that the applicant had applied in her maiden name, but on the photograph produced it was found that she was married. A written explanation was called from her which she refused to give. It was, therefore, found that the respondent No.5 was found ineligible.

3. The respondent No.5 who was found ineligible preferred a Revision Application before the Revisional Authority, who by order dated 25th June, 2003 upheld the allotment in favour of the petitioner. However, held that the respondent Nos. 4 and 5 had complied with the required norms. Then it observed that considering the increased population under advertisement area and prospective and present units available in the said area, allotted the ration shops also to them. It was further set out that ration shop of Respondent No.5 should be granted to Respondent No.5 after receipt of written application. It was then set out that after getting minimum units to the petitioner herein the additional units be divided between the two shops to be allotted to the respondent Nos. 4 and 5. That order was passed on

25th June, 2003. It is this order which is the subject matter of the present petition.

4. On February 25, 2005 by an interim order the Respondent Authorities were directed that if an order releasing the stock to the Respondent Nos. 4 and 5 had not yet been issued the same not to be issued. That was continued pending the hearing and final disposal of the petition.

5. On behalf of the authorities an affidavit has been filed by Ashok C. Madane, Assistant controller of Rationing. It is set out therein that as per the letter dated 17th May, 1999 the Deputy Secretary to Government, Food and Civil Supplies and Consumer Protection Department, had addressed a letter to the Controller of Rationing stating therein that only one Fair Price Shop will be allotted for each item number and for allotment of additional Fair Price Shop, fresh advertisement will be issued. It is then set out that on 9th June, 2000 a policy decision was taken by the State Government that minimum number of units for which the shop could be sanctioned to the owner in Mumbai/Thane is 3000 and maximum is 8000.
In the present case the units available are 4172.

6. Respondent No.5 has filed a reply. It is set out therein that the respondent No.2 in the impugned order has mentioned that the petitioner should be given minimum units as per Circular issued. It is,

therefore, set out that the petitioner is entitled to only 3000 units as per Government Circular dated 9th June, 2000. Only the additional units are to be allotted to the respondent No.5 and as such the petitioner could not have any grievance for granting additional ration shop in her favour as she fulfills all requirements. It is pointed out that the application in her maiden name was through oversight. It is also submitted that she meets with all the requirements as she belongs to educated unemployed. Reliance is placed on the judgment of two Division Benches of this Court in Shri Vajaram J. Choudhary vs. The State of Maharashtra & Ors., in Writ Petition No.850 of 2001 decided on 3rd May, 2001and the judgment in Writ Petition No.167 of 2001 decided on 28th February, 2001 to contend that the respondent NO.2 has power to grant additional ration shop. It may be mentioned that in Writ Petition No.167 of 2001 the advertisement was issued on 4th June, 1998 so also in Writ Petition No.850 of 2001, the last date for submitting applications was 7th July, 1998. For the aforesaid reasons it is set out that the petition be dismissed.

7. At the hearing of this petition on behalf of the petitioner learned Counsel submits that considering the affidavit of Ashok C. Madane it is clear that pursuant to Circular dated 17th May, 1991 only one fair price shop could be allotted for each item number. In the instant case the advertisement

was issued on 25th June, 2001 for only one shop. It is further clear from the same affidavit that considering the policy decision of the Government taken on 9th June, 2000 the minimum number of units which could be allotted is 3000 and what was available in the instant case was 4172 units and consequently the respondent Nos. 4 and 5 could not have been granted a fair price shop as there were no minimum number of units available and even if they were available that had to be allotted by way of fresh advertisement.

. Reliance was placed on the judgment of this Bench in the case of Shri Suryakant Govindrao Shinde vs. State of Maharashtra & Ors., in Writ Petition No.2246 of 1998 decided on 22nd March, 2005 wherein both the Circular and the policy decision have been taken into consideration as also judgment of the Co-ordinate Bench of this Court in Writ Petition No.850 of 2001. It is pointed out that in view of the said judgment the petition will have to be allowed.

8. On the other hand on behalf of the contesting respondents their learned Counsel contends that the view taken in Writ Petition NO.2246 of 1998 decided on 22nd March, 2005 requires reconsideration. It is pointed out that once there were more units than the minimum and considering the power under Regulation 30 it was open to the respondent No.2 to have allotted

the fair price shops in favour of the respondent Nos. 4 and 5.

9. In Writ Petition No.2246 of 1998 we have considered the Circular of 7th May, 1999 and the Government Resolution of 9th June, 2000. We have noted that the learned Division Bench while deciding the matter in Writ Petition No.850 of 2001 did not take into consideration the circular and the resolution as the applications were invited earlier on 7th July, 1998. We have also noted that before the Division Bench, the earlier judgment of another Division Bench in Writ Petition No.2971 of 1998 decided on 11th August, 1998 had not been placed for consideration. In that judgment the earlier Division Bench had taken a view that for allotment of additional shop an independent advertisement will have to be issued. Considering the Circular and G.R. in the case of Suryakant Govindrao Shinde (supra) this Court observed as under:-

(i) That after the Circular/letter of 7th May, 1999 and the Government Resolution of 9th June, 2000 that only one shop can be issued under one item no. The power under Clause 30 cannot be invoked to increase the number of shops as what the Revisional Authority has to consider is the legality and propriety of the order passed by the Rationing Officer in the allotment of shops advertised.

(ii) Considering the Government Resolution of 9th June, 2000 no fair price shop can be allotted of units less than 3000 and should not exceed 8000. The G.R. dated 9th June, 2000 has not disturbed the allotment earlier made and has made it prospective.

(iii) The minimum number of units has to be 3000 and maximum units has to be 8000. It is not open to the Controlling Officer in the event there are more units than 3000, but less than 8000 to grant any additional shop. It is only when there is an excess number will it be open to olpen a new fair price shop. That would be after following the procedure namely issuing of fresh advertisement.

10. Considering the above in our opinion as the advertisement in the present case was issued on 25th June, 2001 the judgment in the case of Suryakant Govindrao Shinde (supra) will clearly apply to the facts of the present case.

11. In the light of that Rule is made absolute in terms of prayer clause (a). In the circumstances of the case, there shall be no order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)